

Service Date: August 16, 1988

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application	)	TRANSPORTATION DIVISION
OF Burlington Northern Railroad	)	
Company to discontinue its agency	)	DOCKET NO. T-9237
operations at Rudyard/Hingham,	)	
Montana.	)	ORDER NO. 5860

\* \* \* \* \*

FINAL ORDER

\* \* \* \* \*

APPEARANCES

FOR THE APPLICANT:

Charles Dearden, Murphy, Robinson, Heckathorn & Phillips, P.O.  
Box 759, Kalispell, Montana 59901

FOR THE COMMISSION:

Geralyn Driscoll, Staff Attorney, 2701 Prospect Avenue,  
Helena, Montana 59620

Wayne Budt, Administrator, Transportation Division, 2701  
Prospect Avenue, Helena, Montana 59620

BEFORE:

DANNY OBERG, Commissioner and Hearing Examiner

### BACKGROUND

Burlington Northern Railroad Company (BN) applied to the Montana Public Service Commission (Commission) on April 11, 1988, for authority to discontinue its agency and dispose of the depot facilities at Rudyard and Hingham, Montana, and dispose of the depot facilities at each location. These agencies were previously dualized with the PSC's approval.

After proper notice a public hearing was held on June 22, 1988, at the Senior Citizen's Center, Rudyard, Montana. At the conclusion of the hearing the parties stipulated to a final order.

### SUMMARY OF TESTIMONY

#### Testimony of Applicant

Izzy Conaway, Wesley Walter and William Allbright testified for BN.

Izzy Conaway. Mr. Conaway is the regional manager of station services for the Seattle region; Rudyard/Hingham is in the Seattle region. He testified that a shipper wanting service from Rudyard or Hingham could contact the Great Falls Centralized

Billing Center (CBC). In a prior docket, T-9158, Dutton, Montana, Mr. Conaway testified on the CBC established by BN in Great Falls.

BN moved that the testimony in Docket No. T-9158 explaining the operations of the CBC be incorporated into this docket. There was no objection to this motion and the Commission incorporates that testimony into this docket.

The CBC operates 24 hours a day 7 days a week. It is a computerized office linked with BN's entire computer system. A customer can call the CBC toll free. The BN employee at the CBC orders cars through the Seattle transportation division. The customer prepares a bill of lading, which is a document that will move the shipment. The CBC arranges to have the cars picked up and can provide the shipper with information on BN's trains throughout the system.

Mr. Conaway testified that he contacted all the shippers in the Rudyard/Hingham area. No one he spoke to objected to the agency closing. Mr. Conaway contacted Cargill, Hi-Line Fertilizer, Harvest State Co-op and Montana Merchandising.

Mr. Conaway testified that in his opinion the current agent has no duties. The agent is a protected employee with seniority who would be able to displace a junior BN employee. Mr. Conaway has contacted the agent serving Rudyard/Hingham who has not decided what he intends to do.

Wesley Walter. Mr. Walter is the train master and agent stationed in Havre, Montana. He is responsible for supervising the clerical work at Havre and supervising the agencies throughout the Havre area. He is also responsible for train service in the area.

He testified that there is currently daily service west and east bound from Havre to Rudyard. A special train will also be run if needed. In his opinion, there will be no change in train service if the Rudyard agency is closed.

William Allbright. Mr. Allbright, a senior cost analyst for BN, sponsored Exhibit A "Accounting Exhibits for Proposal to Discontinue Dualized Agency at Rudyard/Hingham, Montana." Exhibit A shows the following cars received and forwarded at Rudyard and Hingham in 1985, 1986, 1987 and part of 1988.

Cars Received and Forwarded

Rudyard

	1985	1986	1987	Jan.-Mar. 1988
Received	363	258	7	2
Forwarded	1,241	1,602	2,510	888

Hingham

Received	34	44	73	23
Forwarded	<u>130</u>	<u>82</u>	<u>328</u>	<u>235</u>
Total	1,768	1,986	2,918	1,148

Exhibit A also contained net revenues for the dualized Rudyard/Hingham agency calculated using the Belt/Carter and the BN formulas.

	Belt/Carter Formula of Net Revenue From Railway Operations	BN Formula of Net Results of Operation
Rudyard/Hingham		
1985	\$773,743	\$390,106
1986	493,246	246,602
1987	905,550	461,206
J-M 1988	346,435	181,471

The majority of cars forwarded were shipping barley and wheat.

The majority of cars received were shipping fertilizer.

Page 8 of Exhibit A showed the number of units of work handled by the agent and the estimated amount of time consumed performing agency work at the Rudyard/Hingham agency during 1987.

This exhibit uses a unit time factor calculated by BN as an estimate of how much time each function at the agency should take.

This schedule showed a total time worked of 2,000 hours and a total time required for agency work of 84 hours. Based on BN's estimation of time required to do a unit of agency work, the agent at Rudyard/Hingham had 30 percent of his time available for agency work, 4 percent of his time available for travel and 66 percent of the time available for other work if there were work to do. Mr. Allbright testified that, in his opinion, because of the Centralized Billing Center at Havre, the agent at Rudyard/ Hingham, in fact, has no work to perform.

Burlington Northern rested.

TESTIMONY OF PUBLIC WITNESSES

Mr. James Mular, legislative director of the Transportation and Communications Union (TCU), formerly the Brotherhood of Railway and Airline Clerks (BRAC), testified in opposition to the closure of the Rudyard/Hingham agency. Mr. Mular believes that public convenience and necessity require the Rudyard/Hingham agency to remain open. Using either the Belt/Carter or BN formula, this is a profitable agency. The lack of shipper testimony in opposition to the closing of the agency does not establish that public convenience and necessity do not require an agency at Rudyard/Hingham.

Mr. Mular testified that the current agent, Wilfred Gunderson, is a protected employee. There will be no cost savings to BN to close the Rudyard/Hingham agency. It will merely cause disruption in Mr. Gunderson's life and adversely affect service in the area.

Mr. Mular testified that BN's figures at page 8 of Exhibit A concerning the time it takes to perform an agency task do not accurately reflect what an agent does. He introduced into the record Exhibit Nos. TCU-1 through 6. There are a variety of

Burlington Northern forms used for such things as presentation of damage claims, car orders, demurrages, yard checks, bills of lading and yard inspections. It is Mr. Mular's opinion that the agent is productive and provides useful service to the public. It is also his opinion that the CBC office in Great Falls violates both Montana statute and prior Commission orders.

Mr. Mular requested that the Commission take administrative notice of its orders concerning other agencies at Gilford, Kremlin, Vernes and Joplin. It is his opinion that BN is not complying with the previous Commission orders concerning these four blind sidings.

It is Mr. Mular's opinion that Burlington Northern hopes to centralize all of its agency services into one or two centralized offices and discontinue agency service in the rural areas. Mr. Mular testified that statements appearing in paragraph 3 of BN's petition in this matter violate prior Commission orders.

Paragraph 3 of the Petition states:

In an effort to better utilize personnel and computer systems while still providing good, and often better, service to customers, the waybilling functions for Rudyard/Hingham were transferred to Great Falls on April 16, 1984, and the rest of the agency functions for Rudyard/Hingham were moved to Great Falls on

September 1, 1985. Except for some minor incidental functions, the agent for Rudyard/Hingham provides no service to Burlington Northern or to its customers.

Mr. Mular testified that removing the agencies results in long stretches of track without personnel, and in some cases, without radio contact. He believes that there is approximately 104 miles between Shelby and Havre without train personnel if this agency is allowed to close. He also questioned where such things as placards for hazardous waste will be stored in the event that the agencies are closed.

Mr. Mular also asked the Commission to take into consideration discussions between his union and BN personnel during the 1987 legislature regarding the amendments of 69-14-202, MCA, and its subsequent application. Mr. Mular testified that BN indicated it would not seek the closure of any stations where the agent was within two years of retirement. In return for this promise the TCU and other unions did not oppose the amendment of 69-14-202, MCA. This policy would have avoided both the bumping of junior employees and the upheaval in an agent's life. The agent at Rudyard/Hingham is 58 years old and within a few years of retirement.

Mr. Mular also requested that if the Commission allows



the closure of the agency it give employee wage protection under 69-14-1001, MCA, and that it take into consideration Idaho and Maryland orders providing such protection in 1981 and 1973.

#### FINDINGS OF FACT, DISCUSSION AND ANALYSIS

The Commission finds that Rudyard received 363 shipments in 1985, 258 in 1986, 7 in 1987 and 2 from January through March in 1988. It forwarded 1,241 shipments in 1985, 1,602 in 1986, 2,510 in 1987 and 888 from January through March in 1988. Hingham received 34 shipments in 1985, 44 in 1986, 73 in 1987 and 23 from January through March in 1988. It forwarded 130 in 1985, 82 in 1986, 328 in 1987 and 235 from January through March in 1988. The dualized agency is profitable using either the BN or Belt/Carter formula. No shippers or receivers of freight appeared in opposition to the application.

Based on the absence of shipper testimony and BN's testimony that its Great Falls Centralized Billing Center is willing and able to provide all necessary services, the Commission finds that public convenience and necessity does not require the Rudyard/Hingham agency remain open.

When a railroad demonstrates that it has facilities for meeting shipper needs, some level of shipper support is necessary

for a finding that public convenience and necessity require the continuation of agency service. The Commission continues to require all railroads to meet the statutory duty of providing shipping facilities and continually striving to meet shipper needs.

The Commission has always taken the position that the manner in which an agency is staffed is a management decision that will vary with the needs of a particular locality. The Commission has never defined specifically what the staffing of an agency requires and will not do so now. State law requires the staffing of agencies the Commission has not authorized to close. The Commission will entertain shipper complaints that the staffing of any given agency is inadequate.

No rule can be used to determine whether public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered. See Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Board of Railroad Commissioners, 225 P.2d 346 (Mont. 1953) cert. den. 346 U.S. 823.

The Commission concludes that in this case BN has established that public convenience and necessity do not require the continuance of an agency at Rudyard/Hingham, Montana.

#### CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA. The petition to close the Rudyard/Hingham agency is made pursuant to 69-14-202, MCA (1987).

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.

3. Public convenience and necessity do not require the continuance of an agency at Rudyard/Hingham, Montana.

4. The Commission concludes that Burlington Northern Railroad Company may remove the Rudyard depot. Prior to its disposal, BN should determine whether the building is of historical significance and preserve it if it is historically significant or allow local governments in the area the opportunity to utilize the building. The Commission directs Burlington Northern Railroad Company to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application in Docket No. T-9237 to close the agency at

Rudyard, Montana and dispose of the depot facility is Granted.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that pursuant to stipulation that this is a final order.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are denied.

IT IS FURTHER ORDERED that this order be effective immediately and that a full, true and correct copy be mailed to the Applicant and all parties of record.

Done and Dated this 16th day of August, 1988 by a vote of

5 - 0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Commissioner

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TOM MONAHAN, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Carol Frasier  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.